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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,438	01/23/2002	Daniel A. De Schryver	FR-7095	7949

7590 07/16/2004

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EXAMINER

SZEKELY, PETER A

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/055,438

Applicant(s)

DE SCHRYVER ET AL.

Examiner

Peter Szekely

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-23, 32-35 and 40-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-23, 32-35 and 40-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6, 8-23, 32-35, 40-59, 62, 63 and 66-83 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. "Not more than about 5 grams/10 minutes" is indefinite. 5.2 grams/10minute is about 5 grams/10 minutes and accordingly 5.19/10 minutes is not more than about 5 grams/10 minute. This is sure to confuse the unfortunate artisan of ordinary skill in the art who would read this, just as it befuddled this examiner.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 60, 61, 64, 65 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kyo et al. 4,171,330, Gareiss et al. 5,172,336, Tjahjadi et al. 5,863,974 or Ogo et al. 5,849,826, in view of Nakahashi et al. 5,543,452.
6. Kyo et al. disclose aromatic halogen compounds and their concentration in claim 1, fire retardant assistant and its concentration in claim 21, aromatic halogen compounds from column 7, line 40, to column 10, line 18, zinc borate as the fire retardant assistant in column 10, line 33 and polyolefins with their concentration in column 11, lines 58 and 61-65. Gareiss et al. teach decabromodiphenylthane and a

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metal compound with their concentrations in claim 1, zinc oxide and zinc sulfide as the metal compounds in column 4, lines 7 and 11, polyolefins and their concentrations in column 4, lines 40-60 and PTFE with its concentration in column 9, lines 22-40.

Tjahjadi et al. recite halogenated flame retardant, polyolefin and mineral filler with their concentrations in claims 1, 9, 10 and 17, zinc sulfide as the mineral filler in column 3, lines 19-20, flame retardant concentrations in column 4, lines 10-13 and PTFE in column 4, lines 48-50. Ogo et al. reveal halogenated polystyrene in claim 14, polyolefins and their concentration in column 18, lines 53-64, halogenated polystyrenes in the paragraph overlapping columns 20 and 21, their concentration in column 21, lines 50-54, zinc borate as an auxiliary flame retardant in column 21, line 38 and its concentration in column 21, lines 55-59. Nakahashi et al. display zinc borate in column 6, lines 43-53, olefin polymer and brominated polystyrene having a bromine content of 50-80% in claim 13. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to use the brominated polystyrenes of Nakahashi et al. in order to take advantage of their excellent flame retardance and to select applicants claimed ingredients from a list of equivalents. References can be combined not only for what they individually suggest but also for what they, taken as a whole, would suggest to a person of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). Obviousness may be based upon combination of prior art references where the motivation to combine is either a teaching or suggestion in an individual reference of the proposed combination or in the prior art references as a whole, or in the

knowledge generally available to those skilled in the art. In re Jones, 21 USPQ2d 1941 (Fed. Cir. 1992).

### ***Priority***

7. No priority papers were found in the application. Applicants' attention is directed to the fact, that in the case of U.S. Patent references, it is the filing date, which is the earliest date determining whether they are valid references or not. Chisolm et al., Basset et al. and Bryant et al. all have filing dates, which precede applicants' claimed priority date.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Peter Szekely', with a stylized, cursive script.

Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
7/13/04